Utah

WATER RIGHTS FACT SHEET

August 15, 2001

Water Rights System:

The prior appropriation doctrine is the basis of water appropriation in Utah. State statutes provide that all water is the property of the public, and a water right is the right to the use of water based upon quantity, source, priority date, nature of use, point of diversion, and physically putting water to beneficial use. The basis of all water rights in Utah is beneficial use, and a water right is defined by the point of diversion, place of use, amount diverted, purpose of use, and period of use. A complete "water code" was enacted in 1903 and was revised and reenacted in 1919. This law, as amended, is presently in force as Utah Code, Title 73, which can be seen at: http://www.le.state.ut.us/~code/TITLE73/TITLE73.htm. Today, much of the State of Utah is closed to new appropriations of water, so new projects and allocations will require obtaining existing rights and amending them for new purposes.

Responsible Agency:

The State Engineer, through the Division of Water Rights, is responsible for the administration of water rights, including the appropriation, distribution, and management of the state's surface and groundwater. This office has broad discretionary powers to implement the duties required by the office. The Utah State Engineer's Office was created in 1897, and the State Engineer is the chief water rights administrative officer.

Application Process:

The establishment of a new water right or changing an existing right requires the filing of an application with the State Engineer. The types of applications which can be filed in Utah can be seen in Appendix One. To initiate an application, the applicant must describe the proposed development . The application is reviewed, and upon verification of its completeness and adherence to existing policies, a legal notice is prepared and advertised for two consecutive weeks in a local newspaper. Applications can either be processed under formal or informal administrative procedures (this determination must be made by the applicant prior to advertising). The predominant difference between the two procedures relates to the appeal process. Under the formal procedures, an appeal is reviewed based upon the existing record, where as under the informal proceedings, the appeal is handled as a new trial. Following the legal advertisement, there is a 20 day protest period during which time protests can be filed against the application. Protests are not limited to water right holders; anyone who has an interest can file a protest. If an application is

protested, a hearing is held to allow the applicant and protestant to present information to the State Engineer (these considerations can be seen in Appendix Three). The status of an application which has not been acted upon is referred to as "unapproved".

In approving or rejecting an application, the State Engineer considers items outlined in UCA section 73-3-8, as well as water quality issues (see Appendix Two - Assessing an Application). In approving the application, the State Engineer can impose conditions to protect prior water rights, better define the extent of the application, or address other issues such as required permits by other regulatory agencies or requiring minimum stream flow bypasses. The status of an application which has been approved is referred to as "approved", and the approval of an application takes a minimum of three months.

When applications are approved, they are granted for a specific time period (usually three years) in which to develop the project. Once the project is complete and the water has been put to beneficial use, the applicant is required to file proof of appropriation with the State Engineer. This file of proof affirms the quantity of water that has been developed, the extent of use, exact location of the point of diversion, and other related information. Upon filing of proof, the State Engineer then issues the "certificate of appropriation" and the status of the application is referred to as "perfected".

Point of Diversion and Change of Use Procedures:

In most cases, a point of diversion is required in order to obtain a water right. Certain beneficial uses (such as instream flow), however, do not require diversion. Both the point of diversion and the purpose and place of use can be changed. To change the point of diversion, purpose of use, or place of use, a change application describing the proposed change must be filed with the State Engineer. The change application is processed in the same manner as an application to appropriate water and is evaluated using the same criteria. In addition to the criteria used to evaluate an application, the State Engineer also considers if the proposed change will exceed historical levels, and if intervening rights will be impaired due to the proposed change.

State Recognized Beneficial Uses:

Utah recognizes the following beneficial uses:

Agriculture Culinary Domestic Industrial Irrigation Manufacturing Milling Mining	Municipal Power Stock watering Instream flow - fish, recreation and the reasonable preservation or enhancement of the natural stream environment Storage - irrigation, power generation, water supply, aquatic culture and recreation

See Appendix Four for Beneficial Use Quantification.

Groundwater:

The State Engineer, through the Division of Water Rights, is responsible for administering both surface and groundwater. The process for obtaining a groundwater permit (either a new application or a change application) requires the same forms and process as a surface water permit. Groundwater policy, however, is different than surface water, therefore the criteria used to evaluate the groundwater application may be different. Utah is divided into groundwater areas and policy is determined by area.

Utah also regulates the drilling of wells. Any well drilled to a depth of thirty feet or greater must be constructed by a licensed Utah water well driller. The State Engineer, through the Division of Water Rights, is responsible for licensing requirements and well construction criteria, and the development and publication of the Administrative Rules for Water Well Drillers.

Water Rights:

Water rights in Utah can be held by any legal entity. In other words, they can be held solely, jointly, collectively, or in the name of a corporation, organization, or government agency. Regardless of how the right is held, any change application must be titled in that entity's name. Water rights can be transferred from one entity to another, but a change application must be filed and approved by the State Engineer. Water rights can be bought and sold as means for transfer, but approval by the State Engineer is still required. An unapproved or approved application is considered personal property, where as a certificated application or "perfected" water right is considered real property. Since applications for a new water right are considered personal property, they may be bought and sold using a conveyance or assignment. When water rights are perfected, they are considered real property; therefore they must be conveyed by deed to the new owner.

A water right in Utah can be lost by either abandonment or forfeiture. Abandonment is determined by the intent of the water user and does not require a statutory time period. A water right is lost by forfeiture if the right is not used for five year. Water lost through abandonment or forfeiture reverts back to the public and is subject to future appropriation.

Adjudications:

An adjudication of water rights is a State action addressed in district court to determine the water rights on the source or in the area involved in the action. The State Engineer is a party to the action with the statutory responsibility to prepare a "proposed determination of water rights" (PDET) which serves as the basis for the court's decree on the water rights in the area.

A PDE requires a thorough search of the division's records, files, and databases which relate to the adjudication area. Further research is required at the County Recorder and Clerk Offices to identify land ownership where necessary and to obtain information or legal documents that help establish water rights that are not on the division's records or that help clarify or define water rights that are part of the division's records.

Maps of the area are created using digital aerial imagery and location coordinates gathered by GPS methods. A hydrographic survey of the area is conducted and field investigations are made with the water user or water provider to verify his sources of water, points of diversion, and specific

places and nature of use. An evaluation is made of the water right based on the current use of water or the use of water within the recent past (five years).

When the various aspects of the water rights are gathered and evaluated, the water user prepares a Statement of Water Users Claim for each perfected water right, or group of water rights, and requests the water user to review and sign the claim form. When all of the perfected water rights in the adjudication area have been defined by a Statement of Water Users Claim, a PDET book is compiled and published. A copy of the book is distributed to each water user that is listed in the book. The PDET is the State Engineer's recommendation to the court regarding the status and quantification of the water rights. A copy of the PDET, the hydrographic survey maps, the original Statements of Water Users Claims, and other required supporting documentation are filed with the district court.

After the PDET book has been distributed, the statute provides for a 90 day protest period within which protests may be filed objecting to a particular water right listed in the PDET, an attribute of a water right, or the omission of a water right. Objections are filed with the appropriate district court.

Following the protest period, the division staff works with the Attorney General's office to resolve the protests that were filed. This effort often involves additional field work and discussions with the protestant and the water user (if the protestant is not the water user). Once this effort is completed, a pre-trial order is prepared for the court's signature. The pre-trial order essentially decrees those rights listed in the PDET which were not protested and those which were protested but resolved. The pre-trial order sets forth those protests which could not be resolved and which must be determined by the court. Once the remaining protests have been settled or determined by the court, an interlocutory decree is prepared and signed by the court. This decree supersedes all prior findings or decrees.

Ongoing Adjudications:

All of the hydrologic areas of the state are currently involved in a court ordered adjudication of water rights, except the Weber River and Sevier River drainages. The water rights on the Sevier and Weber Rivers were adjudicated and decreed in the 1920's and 1930's. The adjudications in most of the other areas of the state were started between1950 and the early 1970's.

Instream Flows:

In 1986, Utah enacted an amendment to its water code recognizing instream flows as a beneficial use not subject to diversion requirements (UC 73-3-3-11). Utah’s instream flow laws allow the Utah Division of Wildlife Resources or the Division of Parks and Recreation to file for temporary or permanent changes for instream flow rights. The law specifically states that unappropriated water cannot be appropriated for instream purposes. Change application can be filed on rights presently owned by either division; on perfected water rights purchased by either division through funding provided for that purpose, or acquired by lease, agreement, gift, exchange, or contribution; or on water rights acquired by either division with the acquisition of real property. Legislative approval, however, is required before either division can purchase water rights specifically for instream flow purposes. Instream flow rights held by either division retain the priority date of the original right.

Change applications for instream flow must go through the normal application process through the State Engineer, and are subject to the same assessment criteria. Change applications must identify the points on the stream between which the instream flow will be provided and must document the public benefits derived from the instream flow. The State Engineer retains the right to request additional information for the purpose of evaluating the application. There are few restrictions on the change of use of a water right, apart from the criteria used to assess the change application (see Appendix Three).

Although the above mentioned divisions are the only entities allowed to hold instream flow rights, the State Engineer has the legal power, through the application approval process, to preserve water for natural flows. Utah water law empowers the State Engineer to withhold approval or reject applications that would unreasonably affect public recreation or the natural stream environment.

Recognized Beneficial Uses for Instream Flow:

Either division may file applications for permanent or temporary changes for the purpose of providing water for instream flows within a designated section of a natural stream channel or altered natural stream channel for the following purposes: The propagation of fish, public recreation, or the reasonable preservation or enhancement of the natural stream environment.

Holdership of Instream Flow Water Rights:

Although the Division of Wildlife Resources and the Division of Parks and Recreation are the only two entities that may hold instream flow rights, individuals may acquire an existing right and transfer it to these agencies to hold as an instream flow right.

Quantification Requirements and Procedures:

There are no specific quantification requirements for an instream flow right in Utah. Since instream flow rights can only be obtained through transfer, the quantification requirements depend upon the underlying right and how it was originally established.

BLM Specific Information:

The only Federal reserved water rights that the BLM holds in Utah result from Public Water Reserve 107 (PWR 107s).

The Utah BLM has a very good working relationship with the State Engineer's office. BLM receives careful consideration of water right requests. One of the keys to maintaining this relationship is to work through the process set up in the Utah Law of Water Rights.

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Appendix One: Types of Applications

* Application to Appropriate Water - Used to acquire a new water right. These applications can be permanent, temporary, or fixed time.
* Diligence Claim - Filed when it can be shown that a surface water source has been in continuous use since before 1903 or an underground water source has been in continuous since before 1935.
* Application to Segregate a Water Right - Used to divide an unperfected water right into two or more separate and distinct water rights.
* Application for Change of Water - Used to change the point of diversion, place, or nature of use of an existing water right. These applications can be permanent or temporary (less than one year).
* Application for Temporary Appropriation of Water - Used to appropriate water for a period of time less than one year.
* Application for Appropriation for Fixed Time - Used to appropriate water for a specific amount of time when the State Engineer feels that water is available for a limited period.
* Application for Exchange of Water - Used to exchange points of diversion.
* Application for Extension to Resume Use
* Application for Ground Water Recovery
* Application for Ground Water Recharge

Appendix Two: If an Application is Protested:

* Applicant will receive a copy of any protest and will have the opportunity to submit a response. An application may be protested because of concern for water supply, environment, etc..
* An informal hearing may be held on both protested and unprotested applications. If a hearing is to be held, a date and place will be set. Hearings are held twice a year in each county throughout the state. The elapsed time before a hearing may depend on the schedule.
* Hearings are conducted by division representatives. Both applicant and protestants may state their positions. Each has the opportunity for rebuttal. They may represent themselves or obtain legal counsel.
* After the hearing, the State Engineer will review the evidence. He then will approve, reject, or hold the application for further study.
* Applicants and protestants will be notified in writing of the Etate Engineer’s decision.

* An aggrieved party may file a Request for Reconsideration with the State Engineer within 20 days, and/or appeal to the district court within 30 days of the decision.

Appendix Three: Points the State Engineer Considers in Assessing a New Application (or change in use or diversion point):

* Is there unappropriated water in a proposed source?
* Will the proposed use impair existing rights or interfere with more beneficial uses of the water?
* Is the proposed plan physically and economically feasible?
* Does the applicant have the financial ability to complete the proposed works?
* Was the application filed in good faith and not for purposes of speculation or monopoly?
* Will it unreasonably affect public recreation or the natural stream environment?
* Will is be detrimental to the public welfare? Public welfare is not defined specifically by state law.

Appendix Four: Beneficial Use Quantification

The quantity of water appropriated for beneficial use is expressed as a flow rate in cfs (cubic feet per second) and/or as a volume in acre-feet to be taken from a well, river, spring, etc. for the required purpose. The depletion figure is the quantity of water consumed which will be lost to the hydrologic system through the said use. Depleted water does not return to the surface water sources or underground aquifers via seepage, drainage, etc. but is consumed in the growth of plants and animals, evaporation, and transmission away from the area. The following figures are used for general quantification.

DOMESTIC (inside use only): Water diversion for a full-time (permanent residence) use is evaluated at 0.45 acre-foot per family. Part-time (seasonal or recreational) use is equated at 0.25 acre-foot per family. Depletion is generally 20% if using a septic tank or drain field system but varies if the residence is connected to a community sewage system depending on the treatment method used and its distance away from the diverted source.

IRRIGATION (any outside watering): This purpose includes watering of crops, lawns, gardens, orchards, and landscaping. The diversion amount (irrigation duty) ranges from 2 acre-feet per acre in cool, mountain meadow areas to 6 acre-feet per acre in low, hot southern areas of the state. Higher, cooler valleys are generally 3 acre-feet per acre, and lower moderate areas 4 or 5 acre-feet per acre. If land is subirrigated or supplemented by other rights or supplies, the diversion rate may be less than average for the area. Generally, the irrigation season is described as April 1 to October 31 and/or the general frost free period in the area. Some court decrees and early rights authorize differing periods. Depletion varies considerably due to differing soils, temperatures, wind factors, etc. and can range from about 40% to about 70%. Figures are taken from available studies (particularly "Consumptive Use of Irrigated Crops in Utah", Research Report 145.

STOCKWATERING: The diversion figures for this purpose are based on year-round watering. Stock operations for lesser or intermittent periods would need adjustment accordingly. Water diverted for this use is generally considered to be 100% depleted by the animal, evaporation, phreatophytes, and/or waste water collection.

* cow or horse: 0.028 acre-foot
* sheep, goat, swine, moose, or elk: 0.0056 acre-foot
* ostrich or emu: 0.0036 acre-foot
* llama: 0.0022 acre-foot
* deer, antelope, bighorn sheep, or mt. goat: 0.0014 acre-foot
* chicken, turkey, chukar, sage hen, or pheasant: 0.00084 acre-foot
* mink or fox (caged): 0.00005 acre-foot

INDUSTRIAL, COMMERCIAL, RECREATIONAL, COMMUNITY AND MINING: Projects are evaluated on an individual basis. Parameters include method of processing or manufacturing, number of employees, length of workshift and period of operation, type of waste processing and/or discharge, and types of employee and/or public facilities (showers, food preparation, etc.). The Utah State Administrative Rules for Public Drinking Water Systems (particularly R309-203) are guidelines for such estimates.